

## Internal Revenue Service

Number: **201249003**

Release Date: 12/7/2012

Index Number: 168.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-117152-12

Date: September 6, 2012

## LEGEND

Taxpayer	=
Partnership	=
Co-General Partner	=
Investor	=
Corp A	=
City	=
State	=
Month1	=
Date1	=
Year1	=

Dear

This is in response to your letter of April 5, 2012, requesting, on behalf of the above-named taxpayer, an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (the "Election"). The material information submitted for consideration is summarized below.

## FACTS

Taxpayer is the co-general partner of Partnership, which was formed to develop, construct, own and operate apartment housing in a manner allowing low-income housing tax credits to be available under § 42 of the Code, which are allocated among the partners. Taxpayer owns a 0.005 percent interest in Partnership and Co-General Partner also owns a 0.005 percent interest. Investor is the sole limited partner in

Partnership and owns a 99.99 percent interest. Partnership constructed a low-income housing project in City, State and placed its assets into service in Month1.

Taxpayer uses the accrual method of accounting and the calendar year as its taxable year. Taxpayer is wholly owned by Corp A, a tax-exempt organization described in § 501(c)(3).

As Corp A, an exempt organization, owns more than 50 percentage in value of the stock of Taxpayer, Taxpayer is a “tax-exempt controlled entity” within the meaning of §168(h)(6)(F)(iii). Taxpayer was organized with the specific purpose and intent that it would serve as a co-general partner in Partnership and would make the election available under § 168(h)(6)(F)(ii) to be treated as a taxable entity.

Based upon the information submitted, Taxpayer intended to make an election under § 168(h)(6)(F)(ii) on a timely filed federal income tax return for its first tax year ended on Date1. However, due to an oversight, Taxpayer’s accountant did not include an election in the timely filed federal income tax return for the Taxpayer. However, Partnership’s Year1 Form 1065 was timely filed on the basis that an election had been made, i.e., no portion of the property was treated as “tax-exempt use” property for depreciation purposes. This ruling request was filed promptly after discovery of the failure to properly make the election.

## **LAW AND ANALYSIS**

Section 167 of the Code provides generally for a depreciation deduction for property used in a trade or business. Under § 168(g), the alternative depreciation system must be used for any tax-exempt use property as defined in § 168(h).

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property which is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and (2) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal to such tax-exempt entity's proportionate share of such property shall be treated as tax-exempt use property.

Section 168(h)(6)(F)(i) provides that, for purposes of § 168(h)(5) and (6), any tax-exempt controlled entity shall be treated as a tax-exempt entity.

Section 168(h)(6)(F)(ii) provides that, for purposes of § 168(h)(5) and (6), a tax-exempt controlled entity may elect not to be treated as a tax-exempt entity. Such an election is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Section 301.9100-7T(a)(2)(i) requires elections under § 168(h)(6)(F)(ii) to be made by the due date of the tax return for the first taxable year for which the election is to be

effective. Section 301.9100-1(b) defines the term “regulatory election” as including any election the due date for which is prescribed by a regulation. Therefore, the Election is a regulatory election.

Under § 301.9100-1(c) and § 301.9100-3(a), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based on the facts and information submitted, including the affidavits submitted and representations made, we conclude that Taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for granting relief in this case have been satisfied and we grant an extension of time, until 30 days from the date of issuance of this letter, for Taxpayer to file the Election.

To make the Election, Taxpayer must file an amended federal income tax return for its tax year ending on Date1, and attach thereto the Election and information set forth in § 301.9100-7T(a)(3). Also, Taxpayer must attach a copy of this letter to the return. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the Election statement should be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Christina M. Glendening  
Assistant to the Branch Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)